plaintiffs' claim. In other words, does this alleged positive case of the first defendant disclose a reasonable cause of defence to the claim of the plaintiffs. I accept the submission for the plaintiffs that it does not afford an answer to the plaintiffs' claim. The fact that anyone else knew that Mr Thahir had taken bribes and/or secret commissions is altogether irrelevant to the claim of the plaintiffs because the plaintiffs' claim is that they did not consent. In my view, if the plaintiffs can make good their claim, not any one of the allegations made by the first defendant, even if proved to be true, can amount to any defence in law. The authority I rely on is *Belmont Finance Corporation Ltd.* v. *Williams Furniture Ltd & Ors*[3]. It is not necessary in the present context to refer to the somewhat complicated facts in this case. The following passage of the judgment of Buckley L.J. at page 125 will suffice:

"On the footing that the directors of the plaintiff who were present at the board meeting on October 11, 1963 knew that the sale of the Maximum shares was at an inflated value and that such value was inflated for the purpose of enabling the third, fourth, fifth and sixth defendants to buy the share capital of the plaintiff, those directors must be taken to have known that the transaction was illegal under section 54 [of the Companies Act 1948]. It may emerge at a trial that the facts are not as alleged in the statement of claim, but if the allegations in the statement of claim are made good, the directors of the plaintiff must then have known that the transaction was an illegal transaction. But in my view such knowledge should not be imputed to the plaintiff, for the essence of the arrangement was to deprive it improperly of a large part of its assets. As I have said, the plaintiff was a victim of the conspiracy.

I think it would be irrational to treat the directors, who were allegedly parties to the conspiracy, notionally as having transmitted this knowledge to the plaintiff; and indeed it is a well-recognised exception from the general rule that a principal is affected by notice received by his agent that, if the agent is acting in fraud of his principal and the matter of which he has notice is relevant to the fraud, that knowledge is not to be imputed to the principal. So in my opinion the plaintiff should not be regarded as a party to the conspiracy, on the ground of lack of the necessary guilty knowledge."

Finally, there is the submission of Mr. Saville that the first defendant does not allege that either Mr. Thahir or any one of the persons named was acting unlawfully or wrongfully against the plaintiffs. It is, in my view, a perilous submission. It is for the reason that if the plaintiffs make good their claim that the monies in the ACU deposits are the proceeds of bribes and/or secret commissions, then the submission relative to Mr. Thahair must fail. More serious is, the irrelevant submissions of the first defendant against the persons named in the Defence who are not parties to these proceedings become not just offensive, they are scandalous. I agree with Mr. Sherrard that generally it is not proper to use the names of third parties in public proceedings, particularly when they are public officers or well-known and influential persons without scrupulously observing the rules of pleading and justifying the relevance of references to such persons. I am of the view that in these proceedings, the scandalous allegations made by the first defendant against the persons named in the Defence are calculated to prejudice, embarrass and delay the fair trial of this action. In my judgment it is the duty of the court to act at the earliest opportunity to strike out offending facts and matters in pleadings, particularly in the present proceedings where the pleadings were ordered by the court.

For the reasons I have given, I make an order that the parts of Defence referred to in paragraph one of the Summons-in-Chambers No. 2425 of 1981 be struck out and the result is that the directions sought by the first defendant is limited to the issues or matters stated in those parts of the Defence not expunged. The first defendant's application to strike out the Statement of Claim is dismissed. The first defendant will pay the costs of both applications to the plaintiffs.

Order accordingly.

Solicitors: *Selvadurai, Pala Krishnan & Partners; Drew & Napier; Braddell Brothers.*

DAVID ARROWSMITH v. CHANG LEE CHIN

[O.C.J. (Rajah J.) October 15, 1982]

[Singapore – Divorce No. 408 of 1982]

Family Law – Petition for divorce – Women's Charter – Divorce petition – Domicile – Neither party domiciled in Singapore – Court has no jurisdiction to hear petition – Women's Charter (Cap. 47), ss. 3(4), 45A & 80(1)(b)(i).

Divorce – Jurisdiction – Neither party domiciled in Singapore – Scope of Women's Charter (Cap. 47), s. 80(1)(b)(i).

The petitioner, a Caucasian and holder of British Passport was domiciled in England. On July 16, 1974 he married the respondent in Singapore. Subsequently, they left Singapore and lived in a number of places. Since leaving Singapore the respondent had not returned.

The petitioner filed a petition on April 2, 1982 on the ground that the marriage had broken down irretrievably

and that the respondent had deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition. The respondent was living in Australia and the petition was served on her in Sydney.

The question before the court was one of jurisdiction.

Held, dismissing the petition: as neither party to the marriage was domiciled in Singapore at the commencement of the proceedings, the court had therefore no jurisdiction to hear the petition.

CIVIL SUIT.

Joshua Lim for the petitioner.

S.T. Kay for the respondent.

Cur. Adv. Vult.

Rajah J.: The petitioner in this case is a Caucasian and the holder of a British Passport and his domicile is in England. On July 16, 1974 he married one Chang Lee Chin, a spinster and a Singapore citizen at the Registry of Marriages, Singapore. Sometime after the marriage, the petitioner and the respondent left Singapore and lived in a number of places. It is not disputed that since leaving Singapore the respondent has not returned.

The petitioner filed a petition for dissolution of marriage on April 2, 1982 on the ground that the marriage had broken down irretrievably and that the respondent had deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition. It would appear that the respondent is living in Australia and the petition was served on her at an address in Sydney, Australia.

The question in this petition, which was not contested, is one of jurisdiction. Under section 80(1)(b) of the Women's Charter (the Act), the court has jurisdiction to entertain proceedings for divorce only if either of the parties to the marriage is (i) domiciled in Singapore at the commencement of the proceedings; or (ii) habitually resident in Singapore for a period of three years immediately preceding the commencement of the proceedings.

In this case, it is admitted that neither party is habitually resident in Singapore for the requisite period of time. So that the petition for purposes of jurisdiction proceeded on the basis that "either of the parties to the marriage is domiciled in Singapore at the commencement of the proceedings" (Section 80(1)(b)(i)). Counsel for the petitioner while admitting that the petitioner is domiciled in England however contended that, as the respondent is a Singapore citizen, she is by virtue of section 3(4) of the Act, domiciled in Singapore and that therefore the court has jurisdiction to hear the petition.

Section 3(4) of the Act enacts that "For purposes of this Act, a person who is a citizen of Singapore shall be deemed, until the contrary is proved, to be domiciled in Singapore." In the case of a male Singapore citizen the presumption as to domicile would continue until such time as is shown that he had a foreign domicile, either acquired at birth or by choice. The position would be the same with regard to a female Singapore citizen so long as she remained a spinster. But if she marries a person of foreign domicile then she acquires her husband's domicile by dependence and the presumption of her domicile in Singapore is rebutted.

In my view this was the position with regard to a female Singapore citizen until section 45A was introduced into the Act as from June 1, 1981. Section 45A reads:–

"45A. – (1) Subject to subsection (2), the domicile of a married woman as at any time on or after the commencement of the Women's Charter (Amendment) Act, 1980, shall instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before the commencement of the Women's Charter (Amendment) Act, 1980, a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the commencement of that Act."

This new section had the effect of abolishing the wife's domicile as being dependent on the husband's domicile. The section deals with a Singapore wife's domiciliary status under two heads. Section 45A(2) deals with the transitional problem of the domicile of dependence of a Singapore wife who married before June 1, 1981. Section 45A(1) deals with her domiciliary status on and after June 1, 1981. What section 45A(2) does is to change her foreign domicile by dependence into one of foreign domicile by choice until she acquires a new domicile of choice or until her domicile of origin revives.

In the instant case the respondent, a Singapore citizen married the petitioner who was and still is domiciled in England before June 1, 1981. On marriage she acquired her husband's domicile by dependence, that is to say an English domicile. On June 1 1981 her domicile of dependence by operation of law became one of domicile of choice. In other words her domicile is still the same as that of her husband's until it is changed by acquisition of a new domicile of choice or revival of her domicile of origin. There is no evidence before me that she has changed her domicile of choice either by acquisition or revival of another domicile either on or after June 1, 1981.

In the circumstances, neither party to the marriage is domiciled in Singapore at the commencement of the proceedings. This court has therefore no jurisdiction to hear the petition and I accordingly dismiss it.

Petition dismissed.

Solicitors: *Lee & Lim; S.T. Kay & Co.*

HILLE INTERNATIONAL LTD. v. TIONG HIN ENGINEERING PTE. LTD.

[O.C.J. (Rajah J.) October 22, 1982]

[Singapore – Civil Suit No. 595 of 1979]

Trade Marks – Infringement of – Polypropylene chair shells with registered Trade Mark "hille" belonging to plaintiffs – Whether defendants' mark "CILLY" infringes the plaintiffs' Trade Mark.

Passing-off – Manufacture of polypropylene shells – Whether common to the trade.

The plaintiffs, a company registered in the United Kingdom, had used the Registered Trade Mark "hille" upon their polypropylene chair shells since 1968. The said chairs so marked had come to be well-known in the trade and to the public as those of the plaintiffs. The defendants "CILLY" polypropylene shell came on the market in July 1977. The plaintiffs claimed that the defendants had infringed on their Trade Mark and the use of the mark "CILLY" was calculated to lead to deception and to the belief that the defendants' polypropylene chair shells were those of the plaintiffs and to be passed off as those of the plaintiffs. The plaintiffs had therefore suffered damages.

The main question before the court was whether the mark "CILLY" so nearly resembled the plaintiffs' trade mark as to be likely to deceive or cause confusion in the trade.

Held: (1) on the evidence, the defendants had deliberately invented the word "CILLY" to deceive and cause confusion in the trade;

(2) there was no passing-off in this case as the colours and shaped used in the manufacture of polypropylene shell were common to the trade;

(3) there would be an injunction with regard to the mark "CILLY".

Cases referred to:

(1) *White Hudson & Co.* v. *Asian Organization Ltd.* [1965] 1 M.L.J. 186

(2) *Fialho* v. *S.D. Simond & Co. Ld.* (1937) 54 R.P.C. 193

CIVIL SUIT.

Lai Siu Chiu (Miss) for the plaintiffs.

S.K. Isaac for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiffs' claim against the defendants is for (1) infringement of their Registered Trade Mark "hille" (pronounced as in "hilly") No. 50243 (the said Trade Mark) and (2) passing off the defendants' polypropylene chair shells as and for those of the plaintiffs.

The plaintiffs are a company incorporated in the United Kingdom and have their registered office at 132 St. Albans Road, Watford, Hertfordshire WD 2 4 AG, United Kingdom. The said Trade Mark was registered in Class 20, in respect of furniture and parts and fittings therefor, on October 7, 1970, and such registration is and has, at all material times, been valid and subsisting.

Since 1968 the plaintiffs have used the said Trade Mark extensively upon their polypropylene chair shells and their polypropylene chair shells so marked have come to be well known in the trade and to the public as those of the Plaintiffs.

The defendants were incorporated in 1974 as a private limited company. They acquired and took over as a going concern the firm of Tiong Hin Engineering Works and continued to carry on the business of the said firm mainly manufacturing steel office furniture and household furniture. The defendants are the registered proprietors of the Trade Mark "Sunflag" and "DAGLO" which were registered in 1974 and 1977 respectively in Class 20, in respect of all types of furniture.

In 1975 the defendants became aware for the first time that the plaintiffs were selling polypropylene shells under the mark "hille" (See